

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
FORTUNA SYSTEMS CORPORATION)	File Nos. BPMD-8304479, BLMPMD-
)	9551242
Request for Reinstatement of Conditional License)	
for Multichannel Multipoint Distribution Service)	
Station WMH513, E-Group Channels, Bradenton,)	
Florida)	
)	

ORDER ON RECONSIDERATION

Adopted: February 7, 2003

Released: February 11, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us a request by Fortuna Systems Corporation (Fortuna) for further reconsideration¹ of the October 10, 2001 decision of the Video Services Division of the former Mass Media Bureau² denying Fortuna's petition to reinstate³ its conditional license to operate Multichannel Multipoint Distribution Service (MMDS) Station WMH513 on the E-group channels in Bradenton, Florida.⁴ For the reasons set forth below, we grant the Petition.

2. *Background.* On August 5, 1991, Fortuna was granted a conditional license for Station WMH513, an MMDS Station on the E-group channels in Bradenton, Florida.⁵ The license for Station WMH513 was conditioned on, among other things, a submission of an interference analysis demonstrating a lack of harmful interference to each co-channel or adjacent channel Instructional Television Fixed Service (ITFS) licensed station with a transmitter site within fifty miles of Station WMH513 by November 15, 1991.⁶ On November 14, 1991, Fortuna submitted an application to modify its conditional license for Station WMH513, including among other things, a request to change the date of

¹ Fortuna Systems Corporation, Petition for Further Reconsideration (filed Nov. 9, 2001) (Petition).

² Effective March 25, 2002, the Commission transferred regulatory functions for the Instructional Television Fixed Service and the Multipoint Distribution Service/Multichannel Multipoint Distribution Service from the Mass Media Bureau to the Wireless Telecommunications Bureau (Bureau). Radio Services Are Transferred From Mass Media Bureau to Wireless Telecommunications Bureau, *Public Notice*, 17 FCC Rcd 5077 (2002). Accordingly, the Bureau's Public Safety and Private Wireless Division assumed all regulatory duties associated with these services effective March 25, 2002. *Id.*

³ Fortuna Systems Corporation, Petition for Reinstatement (filed Apr. 30, 1992) (Petition for Reinstatement).

⁴ Letter from Charles E. Dziedzic, Assistant Chief, Video Services Division, Federal Communications Commission to Fortuna Systems Corporation (dated Oct. 10, 2001) (Division Letter).

⁵ Application to modify conditional license WMH513, Exhibit 4 at 1 (filed Nov. 14, 1991) (Exhibit 4).

⁶ Exhibit 4 at 1. *See also* 47 C.F.R. § 21.902 (1991).

submission of the interference analysis from November 15, 1991 to May 15, 1992.⁷ On April 1, 1992, the Domestic Facilities Division of the former Common Carrier Bureau released a *Public Notice*, which indicated showed that the conditional license for MMDS Station WMH513 was forfeited “for failure to comply with express conditions.”⁸ On April 30, 1992 Fortuna filed a petition to reinstate its conditional license for MMDS Station WMH513, indicating that the forfeiture of its conditional license was in error because it had requested an extension on November 14, 1991.⁹ On September 14, 1995, Fortuna submitted another application with the interference analysis for Station WMH513 attached.¹⁰ On October 10, 2001, the Video Services Division of the former Mass Media Bureau denied Fortuna’s petition for reinstatement of the conditional license for Station WMH513.¹¹ On November 9, 2001, Fortuna filed the Petition seeking further reconsideration of the Video Services Division’s October 10, 2001 decision.

3. In the Petition, Fortuna contends that the Video Services Division did not adequately review Fortuna’s request for reinstatement.¹² Moreover, Fortuna contends that the Video Services Division declared Fortuna’s conditional license for Station WMH513 forfeited without acting on Fortuna’s modification application in which it sought an extension of the deadline to file the interference analysis.¹³ In this connection, Fortuna argues that it used the proper procedure, *i.e.*, filing a modification application, to seek an extension of time to submit an interference analysis.¹⁴ To support its position, Fortuna states that in *MMDS, Inc.*,¹⁵

the Domestic Facilities Division explained that one of two events would, in the context of the 90-day conditions, preclude the staff from forfeiting a conditional license: (1) that the licensee in fact timely submitted documents complying with express conditions; or (2) that the licensee ‘file[d] a modification application requesting change of the due date for filing this documentation.’¹⁶

Mr. Russell H. Ritchie, President of Fortuna, states that before release of the Public Notice, he had discussions with staff from the Domestic Facilities Division who indicated that filing a modification application was “reasonable, and should not pose any problems.”¹⁷ Fortuna further states that after the *Public Notice*, Fortuna again met with staff from the Domestic Facilities Division who “confirmed that the forfeiture was a clerical mistake in that the FCC had neither reviewed not yet acted upon Fortuna’s still pending application to modify its license.”¹⁸

4. *Discussion.* As Fortuna notes in the Petition, this case is similar to *MMDS, Inc.*, which

⁷ Exhibit 4 at 1.

⁸ Petition for Reinstatement at 1.

⁹ *Id.* at 1.

¹⁰ File No. BLMPMD-9551242 (filed Sept. 14, 1995). Fortuna states that it submitted this application at the behest of Domestic Facilities Division staff. *See* Petition at 3.

¹¹ Division Letter at 1.

¹² Petition at 3.

¹³ *Id.*

¹⁴ *Id.* at 4.

¹⁵ *MMDS, Incorporated, Order on Reconsideration*, 8 FCC Rcd 5440 (CCB DFD 1993) (*MMDS, Inc.*).

¹⁶ Petition at 4.

¹⁷ Petition for Reinstatement at 1.

¹⁸ Petition at 2.

also involved a conditional MMDS license. As Fortuna notes, in *MMDS Inc.*, the former Common Carrier Bureau stated that an applicant could avoid automatic forfeiture of a conditional license by filing a modification application seeking an extension of time to submit an interference analysis.¹⁹ Accordingly, we agree with Fortuna that its license should not have been deemed automatically forfeited prior to a ruling on its request for more time to submit an interference analysis.

5. We therefore reinstate Fortuna's modification application and direct the Division's Licensing and Technical Analysis Branch (Branch) to review such application make a determination whether Fortuna has sufficiently demonstrated circumstances warranting grant of its request for an extension of time to conduct the necessary interference analysis. In evaluating Fortuna's request, the Branch shall consider that Section 1.46(a) of the Commission's Rules states, "It is the policy of the Commission that extensions of time shall not be routinely granted."²⁰ In light of the passage of time since Fortuna filed its original modification application, we direct the Branch to return Fortuna's application and provide it with sixty days from the date of the return notice to supplement the record before we decide whether the extension request should be granted. If Fortuna fails to respond to the return notice, the application will be dismissed for failure to prosecute.²¹ If Fortuna responds to the return notice, we shall decide whether to grant its modification application based upon its original filing and any additional information provided in response to the return notice.

6. Accordingly, IT IS ORDERED that pursuant to Section 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405 and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Further Reconsideration filed on November 9, 2001 by Fortuna Systems Corporation IS GRANTED and the license for Station WMH513 and application File No. BLMPMD-9551242 IS REINSTATED to pending status.

7. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 405, that the Licensing and Technical Analysis Branch SHALL PROCESS File No. BLMPMD-9551242 consistent with the Commission's Rules and this *Order on Reconsideration*.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

¹⁹ See *MMDS, Inc.*, 8 FCC Rcd 5440 at ¶ 5.

²⁰ See 47 C.F.R. § 1.46(a).

²¹ 47 C.F.R. § 21.28(d).